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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Nippo Corporation

File: B-402363.2

Date: May 5, 2010

Kohei Kawabata for the protester.

Javier E. Gonzalez, Esq., Department of the Navy, for the agency.

Paul N. Wengert, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal, failed to consider protester's lower price as a significant advantage, and failed to document basis for source selection decision is denied, where record supports evaluation and documents a thorough consideration of both technical and price factors, and the judgments made in the tradeoff.

DECISION

Nippo Corporation, of Tokyo, Japan, protests the award of a contract to Toa Corporation, of Fukuoka, Japan, under Department of the Navy request for proposals (RFP) No. N40084-09-R-6504, for revitalization of townhouses at Sasebo, Japan. Nippo argues that the Navy misevaluated its technical and price proposals and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The Navy issued the RFP on April 23, 2009, seeking proposals to revitalize 176 residential units in Sasebo, Japan. The RFP provided that a fixed-price design-build contract would be awarded to the offeror whose proposal represented the "best value" based on an evaluation under two equally-weighted factors: technical and price. The technical factor included five equally-weighted subfactors: past performance, design concept, management/key personnel, experience, and schedule. RFP at 12. The RFP explained that the evaluation under the design concept subfactor would be a subjective assessment of the offeror's design scheme "in terms of functional[ity], durab[ility], and esthetic[s]." RFP at 16.

The Navy received three proposals (only Nippo's and Toa's proposals are relevant here). Following an initial evaluation, the Navy conducted discussions and requested final proposal revisions (FPR). After evaluating the FPRs, the Navy selected Toa for award. Following a debriefing, Nippo challenged the award in a protest filed with our Office. On January 7, 2010, the Navy announced that it would take corrective action by reevaluating the proposals and making a new award decision. Based on this corrective action, we dismissed the protest as academic (B-402363, Jan. 13, 2010).

The Navy proceeded to reevaluate the proposals, which resulted in improved ratings for both Toa and Nippo. The evaluation results were as follows:¹

Technical Subfactors	Nippo	Toa
Past Performance	Good	Excellent
Design Concept	Satisfactory	Excellent
Management & Key Personnel	Satisfactory	Satisfactory
Experience	Good	Excellent
Schedule	Satisfactory	Good
Overall Technical Rating	Satisfactory	Good
Price	¥2,910,000,000	¥3,280,000,000

Agency Report (AR), Tab 2, Reevaluation Report, at 35.

Although Nippo's price was low, the source selection board (SSB) recommended that the source selection authority (SSA) make award to Toa. Id. at 35-45. The SSA adopted the SSB's views, and also expressed her independent views regarding the technical advantages of Toa's proposal and the technical weaknesses of Nippo's. The SSA ultimately determined that the technical superiority of Toa's proposal outweighed its higher price, and selected Toa for award. Id. at 51. Following a debriefing, Nippo filed an agency-level protest. After that protest was denied, Nippo file this protest with our Office.

DISCUSSION

Nippo argues that the Navy misevaluated the firm's proposal, disregarded its significantly lower price, and failed to document a reasonable basis for the award decision.² Protest at 3-6. As discussed below, we find all of Nippo's arguments to be without merit.

¹ Our discussion of the evaluation is somewhat general because Nippo has received only a redacted copy of the agency report and exhibits.

² Nippo also argues that it was improper for the Navy to reevaluate the other offerors' proposals as part of its corrective action in response to Nippo's protest of the original award. However, agencies have broad discretion in determining
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Design Concept

Nippo asserts that the Navy misevaluated its proposal under the design concept subfactor. Nippo maintains that the record does not provide support for its satisfactory rating, and that its proposal should have been rated higher in this area. Protester's Comments at 6-7.

In considering challenges to proposal evaluations, we will not reevaluate the proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co., B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. In the context of the consideration of aesthetics in the design concept evaluation, due to the fact that such judgments are inherently subjective, and our Office will only review them to ensure that they are reasonable. American Artisan Prods., Inc., B-292559, B-292559.2, Oct. 7, 2003, 2003 CPD ¶ 176 at 7; SDA Inc., B-256075, B-256206, May 2, 1994, 94-2 CPD ¶ 71 at 10.

Our review of the record shows that Nippo's proposal received three evaluated strengths under the design concept subfactor—for offering improvements to the safety and functionality of its bathrooms, for using energy-efficient design measures, and for offering a second color scheme, AR, Tab 2, Reevaluation Report, at 23—but also was assessed multiple weaknesses. Most of the weaknesses were described as minor, but the remaining weaknesses—including poor pergola design³ and an overall unpleasing aesthetic design scheme, in the unanimous opinion of the evaluators—were considered significant. AR, Tab 2, Reevaluation Report, at 40. The evaluators specifically concluded that the weaknesses offset the strengths, and that a subfactor rating of satisfactory therefore was appropriate. *Id.* The agency's approach—balancing evaluated weaknesses against strengths—in determining the appropriate rating was unobjectionable, and we find nothing unreasonable in its ultimate

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appropriate corrective action, and to the extent that it wishes to do more than what a protester views as the minimum in implementing corrective action, there generally is no basis for our Office to object. ST Aerospace Engines Pte. Ltd., B-275725.3, Oct. 17, 1997, 97-2 CPD ¶ 106 at 6. Nippo further asserts that the Navy took too long to handle its agency-level protest of the initial award, and that its decision denying that protest was cursory. However, our bid protest jurisdiction does not extend to review of the agency-level protest process.

³ Among the architectural requirements, offerors were to “[p]rovide new designed pergola at 2-bedroom unit buildings,” RFP, Specifications, Part 3, at 4, and were to submit three alternative designs. RFP at 16.

conclusion that the combination of strengths and weaknesses equated to a satisfactory rating.

Nippo also asserts that the debriefing provided by the agency shows that its proposal improperly was downgraded for flaws in its initial proposal that were corrected in its FPR. Protest at 4. This argument is without merit. Our review is based on the evaluation record, not the information provided in a debriefing. In any case, while the debriefing materials do identify evaluated flaws in Nippo's initial proposal, the debriefing also goes on to specifically note that these flaws were corrected in the FPR. AR, Tab 2, Reevaluation Report, at 25. The contemporaneous record confirms that the evaluation considered only strengths and weaknesses in Nippo's FPR; the agency did not downgrade Nippo for flaws in its initial proposal that were corrected. See generally Raydar & Assocs., Inc., B-401447, Sept. 1, 2009, 2009 CPD ¶ 180 at 6 (alleged inadequacies in a debriefing do not provide a basis to sustain a protest).⁴

Price Evaluation

Noting that its price was more than 11% below Toa's, Nippo argues that an equal weighting of price and technical factors—as required by the RFP—would have resulted in its lower price being found to outweigh the technical advantages of Toa's proposal. It claims that award at a price more than 10 percent higher than Nippo's could only be justified if Toa's proposal had been rated two adjectival ratings (rather than one) better than Nippo's. Protester's Comments at 8-9. Nippo also argues that the Navy has failed to explain what advantages Toa presented that would justify paying Toa's ¥370 million (roughly \$3.2 million) higher price. Protest at 5. Finally, Nippo argues that the Navy has not documented the basis for its price-technical tradeoff. Id. at 6.

In conducting a price-technical tradeoff, the SSA has discretion to select a higher-priced, higher technically-rated proposal if doing so is in the government's

⁴ In challenging the evaluation, Nippo also argues that it was not adequately informed of the weaknesses in its proposal during discussions. Protest at 4; Protester's Comments at 7. However, Nippo identifies no specific areas that it believes discussions should have addressed, and does not explain how it could have improved its proposal if more detailed discussions had been conducted. While discussions must be sufficiently detailed to lead an offeror into the areas of its proposal requiring amplification or revision, Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 10, general allegations of inadequate discussions, without more, are not sufficient to demonstrate that discussions were inadequate, or that the protester was somehow prejudiced. Precision Mold & Tool, B-400452.4, B-400452.5, Apr. 14, 2009, 2009 CPD ¶ 84 at 6 n.5. Nippo's arguments are not sufficiently specific to show that the discussions here were inadequate.

best interest and is consistent with the solicitation's stated evaluation and source selection scheme. University of Kansas Med. Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6.

The contemporaneous record here shows that the SSB identified specific advantages in Toa's proposal under four of the five subfactors,⁵ and acknowledged the magnitude of Nippo's price advantage in recommending Toa for award. AR, Tab 2, Reevaluation Report, at 43-45. The SSA reviewed and accepted the SSB's ratings. In explaining her reasoning for selecting Toa at its higher price, the SSA noted Toa's superior design concept, excellent past performance, demonstrated experience in design-build construction, and its thorough proposed schedule, which, she found, accounted for contingencies better than Nippo's. Id. at 48-49.

Our review of the record shows that the SSA compared the proposals under each subfactor, was fully aware of the proposals' evaluated strengths and weaknesses, and gave significant weight to Nippo's price advantage when she performed the tradeoff. AR, Tab 2, Reevaluation Report, at 45. As for Nippo's claim that its price advantage could only be offset by a two-adjective rating difference, there was nothing in the RFP that established such parameters for the tradeoff, and we find nothing unreasonable in the agency's concluding otherwise. An agency is not required to engage in a mechanical process of equating differences in adjectival ratings to some established dollar value or percentage difference in price. To the contrary, adjectival ratings are merely a guide to intelligent decisionmaking, and it generally is improper for an agency to rely on a purely mathematical or mechanical price-technical tradeoff methodology. Master Lock Co., LLC, B-309982.2, June 24, 2008, 2009 CPD ¶ 2 at 10.

The protest is denied.⁶

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Acting General Counsel

⁵ The evaluators viewed the proposals as equal under the management/key personnel subfactor. AR, Tab 2, Reevaluation Report, at 44.

⁶ Nippo argues for the first time in its comments that its proposal improperly was downgraded under the schedule subfactor for failing to deal with utility outages, asserting that its proposal did address that issue. Protester's Comments at 2. However, the record shows that the Navy specifically identified this concern during Nippo's debriefing on December 10, 2009. AR, encl. 15, Debriefing Slides, at 44. Therefore, any argument about this aspect of the evaluation is untimely because it was not raised within 10 days after the protester was on notice of the evaluated weakness. See 4 C.F.R. 21.2(a)(2) (2010).